EDITOR'S NOTE

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84-1627

Office-Supreme Court, U.S.
FILED
SEP 27 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1985

NO._____

HUR T. DAVIDSON, M.D., ESQ.

Petitioner

v.

EDONIAN HOSPITAL

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Arthur T. Davidson, M.D., Esq.
1378 President Street
Brooklyn, New York 11213

ATTORNEY FOR PETITIONER

QUESTIONS PRESENTED

The following questions are now posed for resolution by this Court;

1. Whether the standard for awarding attorneys fees to the prevailing defendant in an Equal Employment Opportunity case is the same as the standard to be used for the prevailing plaintiff?

2. Whether a prevailing defendant who makes out a prima facie case in an Equal Employment Opportunity case based on race but loses because his primary witness fails to testify can be charged with filing a frivolous case?

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IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1985

NO._____

ARTHUR T. DAVIDSON, M.D., ESQ.

Petitioner

v.

CALEDONIAN HOSPITAL

Respondent

PETITION FOR A WRIT OF CERTIORARI

Arthur T. Davidson, M.D.,ESQ., petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Second Circuit in this case.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

ISSUES PRESENTED

1. In a Title VII case where the plaintiff had a witness who testified that the only reason the plaintiff was not hired for a particular job was because he was Black, was the Court in error for awarding attorneys fees to the defendants on a motion for summary judgment after the Court had stated that a decision could not be made until depositions were taken from all of the members of the search committee to find out, in effect, who made the statement?

2. Where no activity on the part of the defendant's attorneys was required, that is to say, no legal services were performed in the slightest manner by the defendant's attorneys, or by the defendants themselves, did the Court err in awarding defendant's fee for this absence of any activities on the statement that "judicial time was wasted?" Can judicial time be awarded to an attorney's firm?

3. Did the Court err in awarding attorneys fees when there is no basis in the Federal Rules of Civil Procedure for such action when no activity or action on the part of defendant's law firm was

required, indeed was taken?

4. One of the pertinent issues presented is the standard to be followed in the awarding of attorneys fees to the successful defendant.

STATEMENT OF THE CASE

The plaintiff, ARTHUR T. DAVIDSON, M.D., ESQ., a medical doctor and a general surgeon, with outstanding credentials, was rejected for the position of Director of Surgical Services at Caledonian Hospital, and after his rejection, a white physician was selected. Several weeks following the rejection, Dr. Davidson was told by a physician who was on the staff of Caledonian, Dr. Jean Baptiste, that he had heard that the only reason that Dr. Davidson was not selected for the position of Director of Surgery at Caledonian Hospital was because Dr. Davidson was Black.

Dr. Davidson filed charges of racial discrimination under Title VII and a deposition of Dr. Jean Baptiste was held. At the deposition, Dr. Jean Baptiste testified that he had heard the statement, but that he could not identify the party who made the statement. At a conference, in chambers with the attorney for the defendant and with Judge Neaher, said conference having been requested by the defendants to file a motion for summary judgment, Judge Neaher stated that he

would not accept a motion for summary judgment because there was not sufficient evidence to support such a motion at this time. He further stated that, even on the face of Dr. Jean Baptiste's testimony, "Dr. Davidson may come into Court and subpoena the members of the Search Committee of Caledonian Hospital and one of them may admit that racial discrimination was a factor in the selection process."

Judge Neaher requested that depositions be taken of all of the members of the Search Committee prior to the submission for the motion of Summary judgment.

At this point, the attorney for the defendants requested that affidavits be submitted rather than depositions. Affidavits were submitted rather than depositions. Affidavits were submitted of the physicians who were on the Search Committee, but no affidavits were submitted for the entire members of the Search Committee, i.e., the administration officials and the attorneys for the hospital who were present at the interview with Dr. Davidson, and who could have been the source of the remark

that Dr. Jean Baptiste stated. It was, and is palpably apparent, that, according to the rules as laid down by Judge Neaher, no one could have known the actual strength or merit of the case until after the affidavits had been collected and submitted to Judge Neaher or to the plaintiff's attorney prior to being submitted as part of the motion for summary judgment. It was only at this point, if Judge Neaher's rules were to be followed, that the strength of the case would be apparent.

The plaintiff interposed an answer to the motion for summary judgment, as is dictated and required by the Federal Rules of Civil Procedure. Judge Neaher, after receiving the motion for summary judgment and answer, stated that he based all of his reasoning on the case of Harbulak. When Dr. Davidson, in an opposing affidavit, stated that Judge Neaher was clearly violating and vitiating his own rule, Judge Neaher, in an about face, stated that his order was confusing, and that he really meant that attorneys fees would be allowed only for those activities required after the submission of the motion for summary judgment. But

it is very apparent that no action on the part of the defendant's counsel was taken after the submission of the motion for summary judgment. Therefore, an award of attorneys fees would be, in effect, unjust enrichment. Ideed, there is no rule in the Federal Rules of Civil Procedure to substantiate such action. The Judge, then, in later communication, became very angry with plaintiff, Dr. Arthur T. Davidson, because Dr. Davidson pointed outthe inconsistencies on the part of the Judge as he, himself, had admitted to his own confusion and allowed an exorbitant attorneys fee for the defendant.

Additionally, in open Court before a three-man panel of the Court of Appeals for the Second Circuit, the Court agreed fully with the petitioner that: (1) he had, indeed, made out a prima facie case under McDonnell Douglas v. Green; and (2) that the testimony of Dr. Jean Baptiste was admissible at trial, not to prove the issue at point, but to indicate the state of mind of the respondent. (See transcript of oral argument before the Court of Appeals, pp. 15, 16 and 17.)

ARGUMENT

POINT I: THE STANDARD FOR AWARDING ATTORNEYS FEES TO THE PREVAILING DEFENDANT ARE MUCH DIFFERENT AND MUCH HIGHER THAN THE PREVAILING PLAINTIFF

The Supreme Court in Christianburg Garment Company clearly laid the law down for the standards to be applied in the awarding of attorneys fees to the defendant. The opinion written by Judge Stewart stated absolutely and conclusively that the policy consideration underlying fee awards to the plaintiff were inapplicable when the prevailing party is a defendant. The opinion, as written by Mr. Justice Stewart, stated, "the plaintiff is the chosen instrument of Congress to vindicate a policy that Congress considered of the highest priority." Second, "When a District Court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law."

As this Court can clearly see, these policy considerations, which support the award of fees to a prevailing plaintiff, are not present in the

case of a prevailing defendant. A prevailing defendant seeking counsel fees under §706(k) must rely on quite different equitable considerations. The Court found that the award to a prevailing defendant can happen only if the Court finds that the plaintiff's case from the beginning was frivolous, unreasonable, or without foundation. They further warned the District Court to be on guard to "not routinely assume that, because the plaintiff does not prevail, the action was frivolous, meritless, or vexatious when brought." Thus, the prevailing defendant has a much, much heavier burden and must show that from the beginning, the plaintiff's case was without foundation, was without substance, and totally meritless. This obviously is not the fact in the case and cannot be construed as such. The Court is enunciating its very high policy that the prevailing defendant almost never is awarded attorneys fees. (Christianburg Garment Co. v. EEOC, 42 U.S.C. 412 1978).

The U.S. District Court for the Eastern District of New York, in Viola Sportswear v. Mimun,

82-3783, November 15, in awarding $20,000.00 against the plaintiff, found that the only claim of violation was based on the sale of one pair of jeans for the grand price of $10.00, which might possibly have come into the selling defendant's hand before the exclusive license was granted to the plaintiff. The president of Viola Sportswear admitted that he had not reviewed the complaint before it was filed, knew of only the single pair of jeans being sold, had no evidence of a nation-wide conspiracy and stated, indeed, the jeans might have come into the selling defendant's hand before the license was granted. Under these set of facts, the Court ruled the case was frivolous.

But, here, under the facts of the case, it was so obviously and patently frivolous, the Court, itself, reduced the request by almost one half.

POINT II: ATTORNEYS FEES ARE NEVER AWARDED IN CASES CHARGING RACIAL DISCRIMINATION ON THE BASIS OF BEING MERITLESS. THE CASE MUST HAVE ORIGINALLY BEEN BROUGHT IN BAD FAITH

The cases charging racial discrimination go into the highest category of protection against the awarding of attorneys fees against the unsuccessful plaintiff. The Court lays down the highest and strictest standard. The standard of meritlessness and of no foundation and groundless have no consideration here. The Court in Richardson v. Hotel Corporation of America, 332 F. Supp. 511, which was affirmed by the

that a fee award to a prevailing defendant is unjustified where a claim of racial discrimination, though meritless, was made in good faith. The Court states at the very highest level, the policy that there must be free and open access to the Court for plaintiffs to bring cases in of racial discrimination. It is very aware that the white employees will almost routinely deny the acts of racial discrimination; and, indeed, the plaintiff will have a very heavy burden of proving it. Therefore, they are not to be penalized for bring-

ing their cases to court. The action of this Court is to attempt to stand in the door of the courthouse and bar a Black plaintiff as George Wallace attempted to stand in the school house and bar Black students. Thus, the Appeals Court, at the very highest level, has set an even higher standard for those cases where racial discrimination is brought. That is, the idea of the case being meritless, without foundation, has no bearing. There must be bad faith from the very beginning. (Richardson v. Hotel Corporation of America, 332 F. Supp. 519, Ed. La., 1971). Aff'd., 469, F. 2d 951 5th Cir., 1972.

POINT III: ATTORNEYS FEES ARE NEVER AWARDED IN CASES CHARGING RACIAL DISCRIMINATION UNLESS THEY ARE BROUGHT IN BAD FAITH IN ORDER TO PREVENT THE ESTABLISHMENT OF AN ATMOSPHERE OF IN TERROREM

The awarding of attorneys fees in cases charging racial discrimination, especially Equal Employment Opportunity cases, is so absolutely high as to be almost impossible for the prevailing defendant to meet. The Court, in numerous cases, has stated over and over that the standards for the awarding of attorneys fees in cases charging racial discrimination have to be much, much higher, and that the fact of the case being meritless and without foundation is of absolutely no consequence. They must have been brought in bad faith. The Court, in Richardson v. Hotel Corporation of America, states, "What practical purpose such an award would serve in this matter is inscrutable, though it might conceivably serve as precedent in terrorem to discourage other Title VII plaintiffs. (Richardson v. Hotel Corporation of America, 332 F. Supp. 519 - 1971). This is the exact reason why, in cases where racial discrimination is charged, attorneys fees are absolutely proscribed,

POINT IV: EEO CASES REQUIRE A HIGHER STANDARD TO AWARD ATTORNEYS FEES TO A PREVAILING DEFENDANT. THE CLAIM MUST BE FRAUDULENT

The Court has clearly recognized the fact that EEO cases are in the highest category to proscribe against the awarding of attorneys fees to the successful defendant. In U.S. Steel Corporation v. United States of America, the Court, in denying attorneys fees stated, "Awards to defendants should be limited to unusual situations, such as defense against clearly fraudulent claims." It is clear that the Court has enunciated a highly different doctrine, not only for the prevailing defendant, but prevailing defendant in an EEO case. Fraud from the beginning must be shown. (United States Steel Corporation v. United States of America, 487 F. 2nd 1396, 3 Cir. 1973).

POINT V: AN EEO CASE THAT SATISFIES THE REQUIREMENTS OF MC DONNELL DOUGLAS V. GREEN CAN NEVER BE CLASSIFIED AS FRIVOLOUS

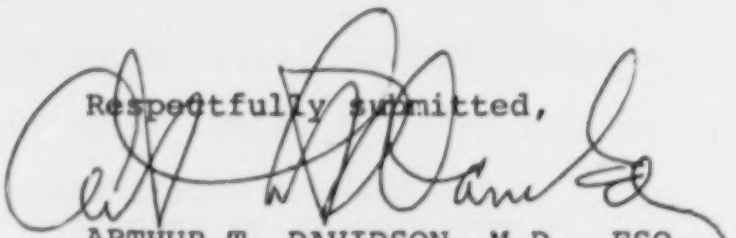
This honorable Court, in McDonnell Douglas v. Green, clearly enunciated the most common way that a member of a protected class can establish a prima facie case in EEO cases. (167. 411 U.S. 792 - 1973).

The three-man panel of the Court of Appeals for the 2nd Circuit unanimously agreed that: (1) the petitioner indeed had satisfied all of the requirements of McDonnell Douglas v. Green in establishing a prima facie case; and (2) that the testimony of Dr. Jean Baptiste, although hearsay, would be admissible in trial, not to prove the truth of the statement, but as indicative of the state of mind of the defendant.

CONCLUSION

For each and all of the foregoing reasons, the order of the Court below awarding attorneys fees should be reversed.

Respectfully submitted,



ARTHUR T. DAVIDSON, M.D., ESQ.
Attorney for Plaintiff/Appellant
1378 President Street
Brooklyn, New York 11213

Telephone: (718) 756-1708

APPENDIX

NOTICE OF APPEAL.....A

DENIAL OF PETITION FOR REHEARING.....1a

ORDER OF THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT.....1c

MEMORANDUM ORDER (Dated 11/29/83).....4a

MEMORANDUM ORDER (Dated 12/19/83.....8a

ORAL ARGUMENT BEFORE A THREE MAN
PANEL OF THE COURT OF APPEALS FOR
THE SECOND CIRCUIT MAY 16, 1984,
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AFFIRMATION OF SERVICE.....11a

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ARTHUR T. DAVIDSON, M.D., ESQ.,

Plaintiff-Appellant,

-against-

CALEDONIAN HOSPITAL,

Defendant-Appellee.

Index No. 84-7041

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that the above named Plaintiff-Appellant, ARTHUR T. DAVIDSON, M.D., ESQ. hereby appeals to the Supreme Court of the United States from the Decision (Order) of the Court of Appeals for the 2nd Circuit Court denying a Hearing en Banc in this action, entered in the office of the Clerk of said Court on the 29th day of June, 1984, and from each and every part thereof.

Dated: July 3, 1984

Yours, etc.

ARTHUR T. DAVIDSON, M.D., ESQ.
Attorney for Plaintiff
and Appellant
1378 President Street
Brooklyn, New York 11213
(718) 756-1708

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 29th day of June, one thousand nine hundred and eighty-four.

- - - - - - - - - - - - - - - - - - -x

ARTHUR T. DAVIDSON, M.D., ESQ.,

Plaintiff-Appellant,

-against-

CALEDONIAN HOSPITAL,

Defendant-Appellee.

UNITED STATES COURT OF SECOND CIRCUIT APPEALS
FILED
JUNE 29, 1984
ELAINE B. GOLDSMITH
CLERK
NO. 84-7041

- - - - - - - - - - - - - - - - - - -x

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the plaintiff-appellant, Arthur T. Davidson, M.D., Esq.

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

Elaine B. Goldsmith
Clerk

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 17th day of May, one thousand nine hundred and eighty-four.

Present:

HONORABLE RICHARD J. CARDAMONE
Circuit Judge

HONORABLE GEORGE C. PRATT
Circuit Judge

HONORABLE DANIEL M. FRIEDMAN*
Circuit Judge

United States Court of Appeals, Second Circuit Filed May 17, 1984

ARTHUR T. DAVIDSON, M.D., ESQ.,

Plaintiff-Appellant,

-against-

CALEDONIAN HOSPITAL,

Defendant-Appellee.

ORDER
Docket No. 84-7041

ARTHUR T. DAVIDSON appeals from a judgment and order of the United States District Court for the Eastern District of New York, Edward R. Neaher, Judge, granting

defendant Caledonian Hospital's motion for a summary judgment dismissing the complaint and awarding to defendant $3,295.75 in attorney's fees. The complaint, which sought relieft pursuant to 42 U.S.C. §1983 and 200e, et. seq., for alleged racial discrimination, was determined by the District Court to be wholly without merit.

*Circuit Judge, U.S. Court of Appeals for the Federal Circuit, sitting by designation. (See p. 3)

In actions brought under 42 U.S.C. §1983 or 42 U.S.C. [2000e, et. seq., the court in its discretion may award to the prevailing party a reasonable attorney's fee. 42 U.S.C. §1988 and §2000e-5(k). It is well settled that a stricter standard governs the award of attorney's fees to prevailing defendants than to prevailing plaintiffs in these cases. See Albemarle paper Co. v. Moody, 422 U.S. 405 (1975); Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968). The reason for this is that the possibility of a fee award to defendants might deter some aggrieved parties from seeking to vindicate their civil rights. Nevertheless, the Supreme Court has made clear that an additional purpose in providing for attorney's fees was to protect defendants from frivolous and unjustified

suits. Christianburg Garment Co. v. E.E.O.C., 434 U.S. 412 (1978).

In Christianburg Garment, the Court held that "a district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." Id. at 421. See Hughes v. Rowe, 449 U.S. 5, 14 (1980) (appllying same standard to section 1983 actions). This is not a standard to be taken lightly; however, we are satisfied in this instance that the district court paid it great deference and scrutinized the record closely before awarding fees. Moreover, the district court properly took into account the fact that plaintiff is an attorney and thus should have been aware that his suit was entirely without basis. See Harbulak v. County of Suffolk, 654 F. 2nd 194 (2d Cir.

1981).

We further reject plaintiff's contention that the fee award is excessive. The amount is fair

and reasonable under the circumstances, fully supported by the record and not seriously disputed.

In short, we find no merit to any of plaintiff's argument and, accordingly, affirm the judgment of the district court.

Richard J. Cardamone, U.S.C.J.

George C. Pratt, U.S.C.J.

Daniel M. Friedman, U.S.C.J.

*N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARTHUR T. DAVIDSON, M.D., ESQ.	:	
Plaintiff	:	
against	:	81 CV 3658 (ERN)
CALEDONIAN HOSPITAL,	:	
Defendant	:	

MEMORANDUM ORDER

In this Title VII case, the Court, by order of November 7, 1983, withheld judgment for defendant pending its approval of an affidavit in support of an award of a "reasonable" attorney's fee. The case is before the Court upon defendant's submission of the affidavit and papers, submitted by plaintiff, in the nature of a motion for reconsideration.

At the outset, the Court acknowledges its responsibility for having created some misunderstanding over the nature of its prior ruling. Plaintiff must understand that for purposes of

awarding fees in a civil rights case, his status as an attorney renders him susceptible to a different measure of -reasonableness in his actions. See Harbulak v. County of Suffolk, 654 F. 2nd 194 (2d Cir. 1981). Even when appearing pro se, he must be able to use his training and knowledge of the law to know when he has no case and therefore, to discontinue prosecution of the suit.

In this case, he did not do so. The discovery supplemented by the papers in support of defendant's motion for summary judgment compelled only one conclusion: that plaintiff had wasted scarce judicial resources and time on a meritless claim grounded entirely upon inadmissible double hearsay. Upon realizing the situation, as an officer of the Court, he had an obligation to discontinue the case. Instead, he chose to oppose the motion for summary judgment upon the merits. In response, under Harbulak, the Court may, in its discretion, call upon him to account to the defendant. However, it was not the Court's

intention to reward plaintiff's obstinance with the bill for the entire litigation. Rather, by the phrase "reasonable attorney's fee," the Court intended that plaintiff pay for the expenses to which defendant should not have been put to close this case, to wit: the expenses on the motion for summary judgment. This more limited award, clearly supported by Harbulak, ensures that individuals, like plaintiff, may be able to expose and redress racial discrimination in employment without engaging the courts in a fanciful journey of litigious exercises.

Plaintiff's motion for reconsideration presents nothing meriting a result other than that already reached; therefore, it is denied. The Clerk is directed to withhold entry of judgment dismissing the complaint pending the Court's ruling regarding an attorney's fee. Defendant shall submit its application detailing services rendered on the motion for summary judgment, time spent and hourly rates supporting its suggested fee in

MEMORANDUM ORDER
11/29/83

accord with this Order on or before December 9, 1983. Plaintiff shall have until December 16, 1983 to file a response.

SO ORDERED

The Clerk of Court is directed to forward copies of this Memorandum Order to plaintiff pro se at 1378 President Street, Brooklyn, New York 11213; and to counsel for defendant

Edward R. Neaher
U.S.D.J.

Dated: Brooklyn, New York
November 29, 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARTHUR T. DAVIDSON, M.D., ESQ., Plaintiff,	:	
against	:	81 CV 3658 (ERN)
CALEDONIAN HOSPITAL, Defendant	:	

MEMORANDUM ORDER

The case is before the Court upon defense counsel's submission of an affidavit in support of a reasonable attorney's fee pursuant to the Court's two prior orders. Plaintiff has filed an affidavit in opposition. This affidavit contains invective and insults directed at the Court. Such conduct neither befits a member of the bar in good standing nor merits a response.

The Court finds that the affidavit of defense counsel John E. Murphy is in proper form and contains a request for a reasonable attorney's fee. The Clerk is directed to enter a judgment dismissing the complaint and an award of attorney's

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

ARTHUR T. DAVIDSON, M.D., ESQ.

Plaintiff-Appellant,

-against-

INDEX
84-7041

CALEDONIAN HOSPITAL,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ORAL ARGUMENT

May 16, 1984

G.E. SANDERS
LAW REPORTERS
608 FIFTH AVENUE, NY 10020
(212) 534-0833

THE COURT: When a member of a minority group applies for a position and he didn't get it and somebody from another group got it, that's a prima facie case, and I understand (inaudible). Then the burden shifts to you to give some non-discriminatory reason why he didn't get it.

MR. FLANAGAN: Which we have done below, Your Honor.

THE COURT: My question is: If a party can make out a prima facie case, how can you say his claim is frivolous - -

MR. FLANAGAN: Well, if the applicant had withdrawn his application before he was rejected, that might go to the frivolousness of the case, which is what happened here. The letters crossed in the mail. He withdrew his application for the position before he was even rejected. That might be some evidence of frivolity. Subsequently, based on a

conversation with Doctor John Baptiste, who informed him that he heard from someone else that he did not get the position because he was black, he instituted this action. I think there's a question as to whether or not a prima facie case can be made out by simply saying that in a position - this is not a factory job; this is not a union position; this is a Director of Surgery in a hospital in an urban area which involves considerations that are best judged, I think, by the Search Committee that was appointed at the hospital. The doctor has come forward with no evidence by which this Court or any other court can second guess their decision.

THE COURT: This case went to trial and Doctor Davidson presented evidence that he made an application that was rejected, a member of a minority group - a white doctor got it - and rested. And you rested. Who wins? He wins. That's the only evidence in the case.

AFFIRMATION OF SERVICE

THIS IS TO AFFIRM THAT ON SEPTEMBER 24, 1984 THREE COPIES OF PETITION FOR WRIT OF APPEALS FOR THE SECOND CIRCUIT WAS SERVED ON CULLEN & DYKMAN, ESQS., ATTORNEYS FOR RESPONDENT, AT 177 MONTAGUE STREET, BROOKLYN, NEW YORK 11201, THAT ADDRESS DESIGNED BY SAID ATTORNEYS FOR THAT PURPOSE BY DEPOSITING A TRUE COPY OF SAME ENCLOSED IN A POST-PAID PROPERLY ADDRESSED WRAPPER, IN A POST OFFICE DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW YORK STATE.

SIGNED _____
ARTHUR T. DAVIDSON, M.D.,ESQ.